

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 95-5231

THERON RATH LIVINGSTON,  
Defendant-Appellant.

Appeal from the United States District Court  
for the District of Maryland, at Baltimore.  
Deborah K. Chasanow, District Judge.  
(CR-94-260-DKC)

Submitted: January 11, 1996

Decided: February 2, 1996

Before RUSSELL, HALL, and WILKINSON, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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**COUNSEL**

David L. Zeiger, Baltimore, Maryland, for Appellant. Lynne A. Battaglia, United States Attorney, John F. Purcell, Jr., Assistant United States Attorney, Baltimore, Maryland, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## OPINION

### PER CURIAM:

Theron Rath Livingston pled guilty to one count of distributing crack cocaine, 21 U.S.C.A. § 841 (West 1981 & Supp. 1995), and was sentenced to serve a term of 70 months imprisonment. He contends on appeal that the district court erred in departing downward by only two offense levels under USSG § 5K1.1,\* as requested by the government. We dismiss the appeal for lack of jurisdiction.

The extent of a downward departure cannot be challenged on appeal by a defendant unless the departure resulted in a sentence imposed in violation of law or resulted from an incorrect application of the guidelines. United States v. Hill, 70 F.3d 321, 324 (4th Cir. 1995). Livingston asserts that the district court failed to make an independent assessment of the usefulness of his cooperation. However, the record does not bear out his assertion. The district court heard an extensive discussion of Livingston's cooperation both from the government and from Livingston's wife and mother. Livingston also submitted a chronology of his efforts to assist the government. The district court found that Livingston's delay in entering his guilty plea and beginning his cooperation had diminished his ability to provide useful information. We find that the district court properly assessed Livingston's assistance before deciding that a two-level departure was appropriate.

Accordingly, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### DISMISSED

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\*United States Sentencing Commission, Guidelines Manual (Nov. 1994).